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NO. 903 P. 12

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Application No.: 10/696,246

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Docket No.: 509982005700

### REMARKS/ARGUMENTS

In a final Office Action mailed on May 17, 2006, claims 1-25 were rejected and/or objected to. Applicants request reconsideration of the pending claims in view of the following remarks.

#### I. Definition of Claim Terms

MPEP section 2101.01 clearly states, “[w]here an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999).”

In the Advisory Action, the Examiner again asserts that the Applicants are attempting to import a limitation from the specification into the claims. Applicants again assert that the Examiner's assertion mischaracterizes Applicants' arguments. Applicants' arguments in the response to the Office Action (Paper No. 20051201) filed on March 3, 2006, were that the specification clearly defines the meaning of a cross-polarization component and that the Taubenblatt reference fails to disclose measuring the cross-polarization components of the diffracted beams during the azimuthal scan, as defined in the current application.

As described on page 5, paragraph [0025], of the present application as originally filed and discussed in the response to the previous Office Action, the claims term “cross polarization components” refers to a change in the linear polarization state between the incident beam and the diffracted beam. Applicants assert that this definition of the claim term “cross polarization components” should be adopted in accordance with MPEP section 2101.01.

#### II. Allowable Subject Matter

Claims 3-9, 11-12, 15-21, and 23-24 were objected to as being dependent upon rejected base claims, but would be allowable if rewritten in independent form. Claim 1 has been amended to include the limitations of claim 3. Dependent claim 7 has been amended to be an independent

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claim. Similarly, claim 13 has been amended to include the limitations of claim 15. Dependent claim 19 has been amended to be an independent claim. Thus, Applicants assert that claims 1, 7, 13, and 19 are allowable. Applicants also assert that claims 2, 4-6, 8, 9, 14, 16-18, 20, and 21 are allowable for at least the reason that they depend from allowable independent claims.

### III. Claims 10-12, 22-25

Claims 10, 22, 25 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Taubenblatt reference in view of U.S. Patent No. 5,979,244 (the Michaelis reference).

As an initial matter, Applicants note that claims 10 and 22 recite "determining/determine rotation of the structure based on the measured cross polarization components." Claims 10 and 22 do not recite conditions a) and b) of claim 25.

In lines 10-16 of column 4, a portion cited to be the Examiner, the Michaelis reference clearly discloses that internal film stress is determined by rotating the sample over a rotation angle  $\alpha$  and measuring a set of ellipsometric parameters. The Michaelis reference discloses a rotating stage 602 to rotate the sample and a control unit 618 coupled to the rotating stage 602. Applicants assert that in the Michaelis reference the amount of rotation of the sample is known. In particular, the rotating stage 602 rotates the sample over the rotation angle of  $\alpha$ . The unknown in the Michaelis reference is the internal film stress, which is determined based on the set of ellipsometric parameter measured while rotating the sample over the rotation angle of  $\alpha$ .

In contrast, claims 10, 22, and 25 recite that the rotation of the structure is determined based on the measured cross polarization components. As noted above, the Michaelis reference determines internal film stress by measuring ellipsometric parameters while rotating the structure rather than determining rotation of the structure based on measured cross polarization components.

Thus, Applicants assert that claims 10, 22, and 25 are allowable over the combination of the Taubenblatt reference and the Michaelis reference. Applicants also assert that claims 11, 12, 23, and 24 are allowable for at least the reason that they depend from allowable independent claims.

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**IV. Conclusion**

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 509982005700. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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